

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

TSI, Incorporated,

Civil No. _____

Plaintiff,

vs.

BioVigilant Systems, Inc.,

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

Defendant.

COMPLAINT FOR PATENT INFRINGEMENT

Plaintiff TSI, Incorporated (“TSI”), for its Complaint against Defendant BioVigilant Systems, Inc. (“BioVigilant”), alleges as follows:

PARTIES

1. Plaintiff TSI is a corporation organized and existing under the laws of the state of Minnesota, with its principal place of business at 500 Cardigan Road, Shoreview, MN 55126.
2. On information and belief, Defendant BioVigilant is a corporation organized and existing under the laws of the state of Delaware, with its principal place of business at 2015 W. Ruthrauff Road, No. 153, Tucson, AZ 85705.

JURISDICTION AND VENUE

3. The claims alleged herein arise under the Patent Laws of the United States, 35 U.S.C. § 1, *et seq.*

4. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).
5. This Court has personal jurisdiction over BioVigilant under Minn. Stat. § 543.19. On information and belief, BioVigilant has offered to sell and/or sold products throughout the country, including in this district, that infringe the patent-in-suit. BioVigilant's website also lists a sales representative for Minnesota. Furthermore, BioVigilant has voluntarily initiated business discussions in Minnesota regarding a license to the patent-in-suit.
6. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1400(b).

PATENT-IN-SUIT

7. On December 14, 2004, United States Patent No. 6,831,279 ("the '279 patent"), entitled "Laser Diode-Excited Biological Particle Detection System," was duly and legally issued by the United States Patent and Trademark Office. A true and correct copy of the '279 patent is attached as Exhibit A.

8. Her Majesty the Queen in right of Canada, as represented by the Minister of National Defence ("Canada"), owns the '279 patent by assignment.

9. TSI is the exclusive licensee of the '279 patent.

JOINDER OF CANADA UNDER RULE 19

10. Canada, as owner of the '279 patent, is required to be joined in this action if feasible.

11. Before filing the action, TSI requested that Canada voluntarily join this action as a co-plaintiff but Canada declined.

12. TSI has not joined Canada as a party to this action because Canada is not subject to service of process in this action.

13. Upon filing this action, TSI will give Canada prompt notice of the action and an opportunity to join in the action. If Canada still declines to voluntarily join the action, then TSI will seek joinder of Canada as an involuntary plaintiff under Rule 19 of the Federal Rules of Civil Procedure.

COMPLIANCE WITH 35 U.S.C. § 287

14. As the exclusive licensee of the '279 patent, TSI makes and sells biological particle detection systems that are embodied by one or more claims of the '279 patent.

15. TSI has complied with 35 U.S.C. § 287(a) by marking its products with the '279 patent.

16. BioVigilant was also given actual notice of the '279 patent by a letter dated June 6, 2006.

CLAIM FOR RELIEF FOR PATENT INFRINGEMENT

17. TSI realleges and incorporates by reference paragraphs 1 through 16 as if fully stated herein.

18. BioVigilant has knowledge of the '279 patent.

19. BioVigilant markets and sells biological particle detection systems, including, for example, the IMD-A 200-1 and IMD-A 220-4.

20. On information and belief, BioVigilant's biological particle detection systems, including the IMD-A 200-1 and IMD-A 220-4, are covered by at least one claim of the '279 patent.

21. Accordingly, on information and belief, BioVigilant is directly infringing, actively inducing others to infringe, and/or contributing to the infringement of the '279 patent by making, using, importing into the United States, offering to sell, and/or selling biological particle detection systems, including, for example, the IMD-A 200-1 and IMD-A 220-4, in this district and elsewhere in the United States, in violation of 35 U.S.C. § 271.

22. On information and belief, BioVigilant's infringement of the '279 patent has been and will continue to be willful.

23. On information and belief, BioVigilant will continue to directly infringe, actively induce others to infringe, and/or contribute to the infringement of the '279 patent unless and until BioVigilant is enjoined by this Court.

24. As a result, TSI will be damaged and will be irreparably injured unless and until BioVigilant's infringing activities are enjoined by this Court.

PRAYER FOR RELIEF

WHEREFORE, TSI respectfully requests this Court:

- A. To enter judgment that BioVigilant has infringed the '279 patent in violation of 35 U.S.C. § 271;
- B. To enter judgment that BioVigilant's infringement of the '279 patent is willful.

C. To enter orders enjoining BioVigilant, and its respective officers, agents, servants, and employees, and attorneys, and all persons in active concert or participation with any of the foregoing, who receive actual notice by personal service or otherwise of the orders, from infringing the '279 patent in violation of 35 U.S.C. § 271;

D. To award TSI its damages in amounts sufficient to compensate it for BioVigilant's infringement of the '279 patent, including enhanced damages for willful infringement, together with pre-judgment and post-judgment interest and costs, pursuant to 35 U.S.C. § 284;

E. To declare this case to be "exceptional" under 35 U.S.C. § 285 and to award TSI its attorneys' fees, expenses, and costs incurred in this action; and

F. To award TSI such other and further relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, TSI respectfully requests a trial by jury of any and all issues on which a trial by jury is available under applicable law.

Dated: November 18, 2010

/s/ Kenneth A. Liebman

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